

## **REMARKS**

Reconsideration of the present application is requested. Claims 15, 17, 19, 20, 22 and 23 have been canceled without prejudice or disclaimer. Claims 1-14, 16, 18, 21 and 24 remain pending. Support for amendments made herein may be found, for example, in previously pending (but now canceled) claim 17, FIG. 1 and pp. 4-6 of Applicants' Specification.

*Because Applicants believe the amendments to claims 1, 17, 23, and in particular, claim 24 would raise new issues requiring further consideration, Applicants have filed this response concurrently with a Request for Continued Examination to further expedite prosecution. Because of these new issues, any such Action subsequent to this RCE (other than a Notice of Allowance) should be NON-FINAL.*

Claims 1-14 and 16-24 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Rathonyi et al. (U.S. Patent No. 6,359,877, hereinafter *Rathonyi*), in view of Tiedmann, Jr., et al. (U.S. Patent No. 5,914,950, hereinafter *Tiedmann*). This rejection is respectfully traversed.

As previously discussed, *Rathonyi* discloses methods for minimizing packet retransmission by adapting packet size. See Col. 7:32-35. Referring to FIGS. 3A-3B, packet size is adapted by "segmenting higher layer PDU frame blocks." See, col. 8:25-28.

Turning to FIG. 5B, when a receiving entity detects an error in a received packet, the receiving entity transmits a NAK signal to the transmitting entity. *Rathonyi* at 15:14-16. The NAK signal is accompanied by a sequence number for the packet having the error. *Id.* Upon receipt, the transmitting entity re-transmits the packet identified by the sequence number. *Id.* at 15:21. In doing so, the transmitting entity re-transmits the packet at the same rate as the original packet. *Id.* at 21-23, *see also, Rathonyi* at 15:36-38, 51-53. Based on the disclosure in *Rathonyi*, it follows that the size of the re-transmitted packet is the same as the size of the originally transmitted packet. Thus, in *Rathonyi*, re-transmitted packets representative of the same data are transmitted at the same rate as the original packets, and have the same size as the originally transmitted packets.

Accordingly, *Rathonyi* fails to disclose or suggest at least, puncturing and/or repeating the channel coded encoder packet to produce a second encoder sub-packet having a second size based on a size of the encoder packet and a second data transmission rate at which the second encoder sub-packet is to be transmitted, the second size being different from the first, but the second encoder sub-packet being representative of the same data as the first encoder subpacket; and transmitting the second encoder sub-packet to the receiver," as required by claim 1.

Moving forward, the Examiner correctly recognizes that *Rathonyi* fails to teach all features set forth in claim 1, and relies upon *Tiedmann* to make up for these recognized deficiencies. *Tiedmann*, however, suffers from the same

deficiencies as *Rathonyi* with regard to claim 1. Therefore, even assuming *arguendo* the Examiner's combination could be made (which Applicants do not admit for the reasons set forth below), the combination of references fails to teach or fairly suggest all features of claim 1.<sup>1</sup>

The above notwithstanding, the skilled artisan would not modify the teachings of *Rathonyi* to arrive at the method of claim 1. As discussed above, in *Rathonyi*, retransmitted packets are retransmitted at the same rate and thus have the same size as those originally transmitted. Therefore, modifying the teachings of *Rathonyi* such that the retransmitted packets are of different size than those originally transmitted would change the principle operation of *Rathonyi*. Namely, the re-transmitted packets would no longer be transmitted at the same rate or have the same size.

For at least the foregoing reasons, claim 1 is patentable over *Rathonyi* in view of *Tiedmann*. Claims 18, 21 and 24 are also patentable over the Examiner's combination of references for at least reasons somewhat similar to those set forth above with regard to claim 1. Claims 2-14 and 16 are patentable at least by virtue of their dependency from claim 1.

---

<sup>1</sup> To be thorough, further expedite prosecution, and for the sake of clarity, Applicants provide discussions of each of the references separately, however, Applicants are not attacking these references individually, but arguing that the references, even taken in combination, fail to render the claimed invention obvious because all features of claim 1 are not found in the prior art.

## CONCLUSION

Accordingly, in view of the above amendments and remarks, reconsideration of the objections and rejections and allowance of each of claims 1-14, and 16-24 in connection with the present application is earnestly solicited.

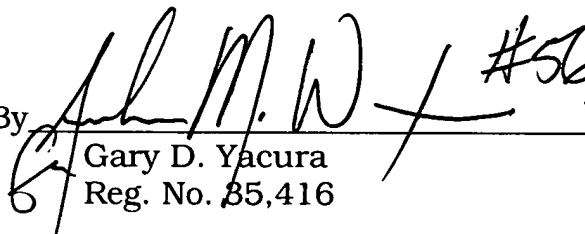
If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone Andrew M. Waxman, Reg. No. 56,007, at the number of the undersigned listed below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

HARNESS, DICKEY & PIERCE, PLC

By

 #56,007  
Gary D. Yacura  
Reg. No. 35,416

GDY/AMW:krm

P.O. Box 8910  
Reston, VA 20195  
(703) 668-8000